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Drywall Tech, Inc. and Boston District Council of Carpenters. Case 1-CA-33373

June 30, 1998

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND BRAME

On April 17, 1996, the National Labor Relations Board issued an unpublished Order adopting, in the absence of exceptions, the decision of the administrative law judge ordering the Respondent, Drywall Tech, Inc., to make whole Paul Lima for any loss of earnings and other benefits suffered as a result of his discharge in violation of the National Labor Relations Act. On September 10, 1996, the United States Court of Appeals for the First Circuit, in Case No. 96-1909, entered a judgment enforcing the Board's Order.

A controversy having arisen over the amount of backpay due the discriminatee, on March 20, 1998, the Acting Regional Director for Region 1 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated April 23, 1998, the counsel for the Acting General Counsel advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by May 7, 1998, summary judgment would be sought. The Respondent filed no answer.

On June 2, 1998, the Acting General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On June 3, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specifica-

tion. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the Acting General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatee is as stated in the compliance specification and we will order payment by the Respondent of those amounts to the discriminatee, plus interest accrued on those amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Drywall Tech, Inc., Westport, Massachusetts, its officers, agents, successors, and assigns, shall make whole Paul Lima by paying him \$5,400.50, plus interest accrued through February 28, 1998, in the amount of \$986.57, for a total of \$6,387.07, plus additional interest¹ accrued to the date of payment, and minus tax withholdings required by Federal and state laws.

Dated, Washington, D.C. June 30, 1998

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ See *New Horizons for the Retarded*, 283 NLRB 1173 (1987).